

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FRANK GALLARDO, Movant, vs. UNITED STATES OF AMERICA, Respondent.	5:22-CV-05007-KES ORDER GRANTING MOVANT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
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Movant, Frank Gallardo, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Docket 1. Judgment was entered against Gallardo, and he filed a notice of appeal. Dockets 30, 31. The court denied Gallardo a certificate of appealability. Docket 29 at 6-7. Gallardo now files a motion for leave to proceed in forma pauperis on appeal and included a financial affidavit. Docket 32.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S. C. § 1915(a)(1), (3).

Based on the information in Gallardo's financial affidavit, this court finds that Gallardo has insufficient funds to pay the \$505 appellate filing fee. *See* Docket 32 at 1-2. His notice of appeal appears to be taken in good faith. Thus, Gallardo's motion for leave to proceed in forma pauperis on appeal (Docket 32) is granted.

IT IS ORDERED:

1. That Gallardo's motion for leave to appeal in forma pauperis (Docket 32) is granted.

Dated October 28, 2022.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE